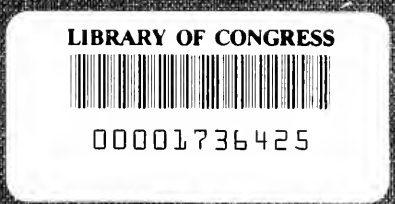

KANSAS BILL.

SPEECH

OF

HON. J. P. BENJAMIN, OF LA.,

DELIVERED IN

SENATE OF UNITED STATES ON THURSDAY, MARCH 11, 1858.

SLAVERY PROTECTED

BY THE

COMMON LAW OF THE NEW WORLD.

Guaranteed by Constitution.

Vindication of the Supreme Court of the U. S.

WASHINGTON:
G. S. GIDEON, PRINTER.
1858.

To Marcus with
the best respects of
E. H. S.

SPEECH.

Mr. BENJAMIN. Mr. President, after the very able and eloquent discourse of the Senator from Missouri, [Mr. POLK,] if I had regard simply to my own reputation in giving utterance to the thoughts which I have conceived upon the subject now before us, I should better consult its interests by seeking another occasion for addressing the Senate; but I am admonished by the increasing impatience of the Senate, by the desire, not only in this Chamber, but in the public at large, to arrive at an early vote on this subject, that all personal considerations must be made to give way, and that each of us must do his duty as promptly as he can.

Mr. President, the issue to which the American people have been looking forward for some years past, with almost instinctive apprehension, is now before us. The urgent, the imperative necessity for its decision is upon us. Again is a slaveholding State demanding admission into the Union, and again is that admission opposed by a large majority of the Senators and Representatives of the non-slaveholding States of the Confederacy. I am aware that every effort is being made to conceal the true motive for this hostility. Pretexts about the irregularity of the territorial government, charges of fraud and deception, vehement asseverations of a disregard of the popular will in the formation of the State constitution—every pretext, every cause, every motive, that the ingenuity of their ablest and most practiced debaters can suggest, have been brought forward as the grounds of this hostility. But, sir, as the discussion has progressed, as the excitement of debate has overcome the cold teachings of prudence, various Senators have made admissions; the truth, which had been concealed behind a cloud, has become apparent to us all, and it is now boldly avowed that Kansas shall never be admitted as a slaveholding State into the Confederacy, not even, to use the words of the Senator from Maine, [Mr. FESSENDEN,] if the whole people of the Territory should establish a constitution recognising that institution.

Opinions thus maturely formed, thus openly avowed, are not to be affected by any argument that I can hope to offer. But, sir, as long as the Constitution of my country endures, as long as I have a constitutional duty to perform upon this floor, I feel myself under the most sacred of all obligations to protest against the doctrines thus asserted,

and to expose, as far as I can, the fallacies by which those doctrines are upheld.

I have still, sir, another duty to perform. As a member of that committee which is charged in the Senate with the examination of all subjects touching the judiciary of the country, it is my duty to make answer to those charges which are brought against the highest judges of the land with a violence, a recklessness, and, I regret to be compelled to add, with a disregard of truth and decency which will yet bring down upon their authors the indignant condemnation of their outraged countrymen.

Mr. President, the whole subject of slavery, so far as it is involved in the issue now before the country, is narrowed down at last to a controversy on the solitary point, whether it be competent for the Congress of the United States, directly or indirectly, to exclude slavery from the Territories of the Union. The Supreme Court of the United States have given a negative answer to this proposition, and it shall be my first effort to support that negation by argument, independently of the authority of the decision.

It seems to me that the radical, fundamental error which underlies the argument in affirmation of this power, is the assumption that slavery is the creature of the statute law of the several States where it is established; that it has no existence outside of the limits of those States; that slaves are not property beyond those limits; and that property in slaves is neither recognised nor protected by the Constitution of the United States, nor by international law. I controvert all these propositions, and shall proceed at once to my argument:

Mr. President, the thirteen colonies which, on the 4th of July, 1776, asserted their independence, were British colonies, governed by British laws. Our ancestors, in their emigration to this country, brought with them the common law of England as their birthright. They adopted its principles for their government so far as it was not incompatible with the peculiarities of their situation in a rude and unsettled country. Great Britain then having the sovereignty over the colonies, possessed undoubted power to regulate their institutions, to control their commerce, and to give laws to their intercourse, both with the mother country and the other nations of the earth. If I can show, as I hope to be able to establish to the satisfaction of the Senate, that the nation thus exercising sovereign power over these thirteen colonies did establish slavery in them, did maintain and protect the institution, did originate and carry on the slave trade, did support and foster that trade, that it forbade the colonies permission either to emancipate or export their slaves, that it prohibited them from inaugurating any legislation in diminution or discouragement of the institution—nay, sir, more, if at the date of our Revolution I can show that African slavery existed in England as it did on this continent, if I can show that slaves were sold upon the slave mart, in the Exchange and other public places of resort in the city of London as they were on this continent, then I shall not hazard too much in the assertion that slavery was the common law of the thirteen States of the Confederacy at the time they burst the bonds that united them to the mother country.

The first permanent colonial settlement made on this continent by the English was made under a charter granted in 1606, in the fourth year of James I, to Sir Thomas Gates and his associates. I leave out of view, as a matter of course, the few abortive attempts that were made towards the close of the sixteenth century by Sir Gilbert Humphreys in the north, and by Sir Walter Raleigh in the State which is represented by my friend from Virginia. Those attempts were all abortive. It is familiar to us all how disastrously they terminated. I say the first permanent settlement made under the authority of the British Crown on this continent, was under the charter of 1606. That charter was subsequently superseded upon *quo warranto*, issued at the instance of the British Crown, and in 1620 another charter took its place, granted to the Duke of Lenox and his associates, who were incorporated under the name of the Plymouth Company. To that company the coast was granted from the fortieth to the forty-eighth degree of north latitude. This charter was followed by successive grants to different noblemen and companies, until the entire coast was disposed of. In 1664, to the Duke of York was granted all the territory as far south as Delaware Bay; and in 1663 and 1666, to Lord Clarendon and his associates the entire coast of the continent, from the twenty-ninth degree of north latitude to that celebrated line of 36° 30′ north, since so famous in the history of our intestine disputes. Thus was conveyed the whole coast comprised within our present limits.

Prior to this very first settlement, the slave trade had been inaugurated and established in Great Britain. The first notice which history gives us of it is the grant of a charter by Queen Elizabeth, to a company formed for the purpose of supplying slaves to the Spanish-American colonies. The Virgin Queen herself was a share-holder. Subsequently, in 1662, under Charles II, a monopoly was created in favor of a company authorized to export to the colonies three thousand slaves per annum; and so valuable was this privilege considered, so great was the influence required for the purpose of obtaining a share in it, that it was placed under the auspices of the Queen Dowager and the Duke of York. The King himself issued his proclamation, inviting his subjects to establish themselves on this side of the Atlantic; and as an encouragement to the migration, tendered a grant of one hundred acres of land for each four slaves that they would employ in the cultivation of it.

The merchants of London found their trade to the slave coast very much cramped by this royal monopoly, granted to royal favorites; and they continued to stun the ear of the Commons with loud complaints that they were excluded from the advantages of so prosperous a traffic; and in 1695 the Commons of England, in Committee of the Whole, resolved, "That for the better supply of the plantations, all the subjects of Great Britain should have liberty to trade in Africa for negroes, with such limits as should be prescribed by Parliament."

In the 9th and 10th William III, an act was passed partially relaxing this monopoly, the preamble to which states that—

"The trade was highly beneficial and advantageous to the kingdom, and to the plantations and colonies thereunto belonging."

This partial relaxation was unsatisfactory. Petitions continued to pour in. In 1708 the Commons again resolved—

"That the trade was important, and ought to be free and open to all the Queen's subjects trading from Great Britain."

And in 1711 they again resolved that "this trade ought to be free in a regulated company; the plantations ought to be supplied with negroes at reasonable rates; a considerable stock was necessary for carrying on the trade to the best advantage, and that an export of £100,000 at least, in merchandise, should be annually made from Great Britain to Africa." Finally, in the year 1749, these repeated resolutions of the Commons, and petitions of the merchants of London, accomplished the desired result. They gained their object by the passage of the act of 23d George II, throwing open the trade, and declaring "the slave trade to be very advantageous to Great Britain, and necessary for supplying the plantations and colonies thereunto belonging with a sufficient number of negroes at reasonable rates."

This legislation, Mr. President, as I have said before, emanating from the mother country, fixed the institution upon the colonies. They could not resist it. All their right was limited to petition, to remonstrance, and to attempts at legislation at home to diminish the evil. Every such attempt was sternly repressed by the British Crown.

In 1760, South Carolina passed an act prohibiting the further importation of African slaves. The act was rejected by the Crown; the Governor was reprimanded; and a circular was sent to all the Governors of all the colonies, warning them against presuming to countenance such legislation.

In 1765, a similar bill was twice read in the Assembly of Jamaica. The news reached Great Britain before its final passage. Instructions were sent out to the royal Governor; he called the House of Assembly before him, communicated his instructions, and forbade any further progress of the bill.

In 1774, in spite of this discountenancing action of the mother Government, two bills passed the Legislative Assembly of Jamaica; and the Earl of Dartmouth, then Secretary of State, wrote to Sir Basil Keith, the Governor of the colony, that "these measures had created alarm to the merchants of Great Britain engaged in that branch of commerce;" and forbidding him, "on pain of removal from his Government, to assent to such laws."

Finally, in 1775—mark the date—1775—after the Revolutionary struggle had commenced, whilst the Continental Congress was in session, after armies had been levied, after Crown Point and Ticonderoga had been taken possession of by the insurgent colonists, and after the first blood shed in the Revolution had reddened the spring sod upon the green at Lexington, this same Earl of Dartmouth, in answer to a remonstrance from the agent of the colonies, replied:

"We cannot allow the colonies to check or discourage in any degree a traffic so beneficial to the nation."

I say, then, that down to the very moment when our independence was won, slavery, established by the statute law of England, had become the common law of the old thirteen colonies.

But, sir, my task does not end here. I desire to show you that by her jurisprudence, that by the decisions of her judges, and the answers of her lawyers to questions from the Crown and from public bodies, this same institution was declared to be recognised by the common law of England; and slaves were declared to be, in their language, merchandise, chattels, just as much private property as any other merchandise or any other chattel.

A short time prior to the year 1713, a contract had been formed between Spain and a certain company, called the Royal Guinea Company, that had been established in France. This contract was technically called in those days an assiento. By the treaty of Utrecht of the 11th of April, 1813, Great Britain, through her diplomatists, obtained a transfer of that contract. She yielded considerations for it. The obtaining of that contract was greeted in England with shouts of joy. It was considered a triumph of diplomacy. It was followed, in the month of May, 1713, by a new contract in form, by which the British Government undertook, for the term of thirty years then next to come, to transport, annually, 4,800 slaves to the Spanish American colonies, at a fixed price. Almost immediately after this new contract, a question arose in the English Council as to the true legal character of the slaves thus to be exported to the Spanish American colonies; and, according to the forms of the British Constitution, the question was submitted by the Crown in Council to the twelve judges of England. I have their answer here; it is in these words:

"In pursuance of his Majesty's order in Council, hereunto annexed, we do humbly certify our opinion to be that *negroes are merchandise.*"

Signed by Lord Chief Justice Holt, Judge Pollexfen, and eight other judges of England.

Mr. MASON. What is the date of that?

Mr. BENJAMIN. It was immediately after the treaty of Utrecht, in 1713. Very soon afterwards the nascent spirit of fanaticism began to obtain a foothold in England; and although large numbers of negro slaves were owned in Great Britain, and, as I said before, were daily sold on the public Exchange in London, (see 2 Haggard's Rep., p. 105,) questions arose as to the right of the owners to retain property in their slaves; and the merchants of London, alarmed, submitted the question to Sir Philip Yorke, who afterwards became Lord Hardwicke, and to Lord Talbot, who were then the solicitor and attorney general of the kingdom. The question was propounded to them, "what are the rights of a British owner of a slave in England?" and this is the answer of those two legal functionaries. They certified that "a slave coming from the West Indies to England, with or without his master, doth not become free; and his master's property in him is not thereby determined nor varied, and the master may legally compel him to return to the plantations."

And, in 1749, the same question again came up before Sir Philip Yorke, then Lord Chancellor of England, under the title of Lord Hard-

wicke, and, by a decree in chancery in the case before him, he affirmed the doctrine which he had uttered when he was attorney general of Great Britain.

Things thus stood in England until the year 1771, when the spirit of fanaticism, to which I have adverted, acquiring strength, finally operated upon Lord Mansfield, who, by a judgment rendered in the case known as the celebrated Sommersett case, subverted the common law of England by judicial legislation, as I shall prove in an instant. I say it not on my own authority; I would not be so presumptuous. The Senator from Maine [Mr. FESSENDEN] need not smile at my statement. I will give him higher authority than anything I can dare assert. I say, that in 1771 Lord Mansfield subverted the common law of England in the Sommersett case, and decided, not that a slave carried to England from the West Indies by his master thereby became free, but that, by the law of England, if the slave resisted the master, there was no remedy by which the master could exercise his control; that the colonial legislation which afforded the master means of controlling his property had no authority in England, and that England by her laws had provided no substitute for that authority. That was what Lord Mansfield decided. I say this was judicial legislation. I say it subverted the entire previous jurisprudence of Great Britain. I have just adverted to the authorities for that position. Lord Mansfield felt it. The case was argued before him over and over again, and he begged the parties to compromise. They said they would not. "Why," said he, "I have known six of these cases already, and in five out of the six there was a compromise; you had better compromise this matter." But the parties said no, they would stand on the law; and then, after holding the case up three terms, Lord Mansfield mustered up courage to say what I have just asserted to be his decision: that there was no law in England affording the master control over his slave; and that therefore the master's putting him on board of a vessel in irons, being unsupported by authority derived from English law, and the colonial law not being in force in England, he would discharge the slave from custody on *habeas corpus*, and leave the master to his remedy as best he could find one.

Mr. FESSENDEN. Decided so unwillingly.

Mr. BENJAMIN. The gentleman is right—very unwillingly. He was driven to the decision by the paramount power of that fanaticism which is now perverting the principles and obscuring the judgment of the people of the North, and of whose effects, I must say, there is no more striking example to be found than is exhibited by its influence on the clear and logical intellect of my friend from Maine.

Mr. President, I make these charges in relation to that judgment, because in them I am supported by an intellect greater than Mansfield's—by a judge of resplendent genius and consummate learning—one who, in all questions of international law, on all subjects not dependent upon the peculiar municipal common law of England, has won for himself the proudest name in the annals of her jurisprudence—the gentleman knows well that I refer to Lord Stowell. As late as

1827, twenty years after Great Britain had abolished the slave trade, six years before she was brought to the point of confiscating the property of her colonies which she had forced them to buy, a case was brought before that celebrated judge—a case known to all lawyers by the name of the slave Grace. It was pretended in the argument that the slave Grace was free, because she had been carried to England; and it was said, under the authority of Lord Mansfield's decision in the Sommersett case, that, having once breathed English air, she was free—that the atmosphere of that favored kingdom was too pure to be breathed by a slave. Lord Stowell, in answering that *legal* argument, said that, after painful and laborious research into historical records, he did not find anything touching the peculiar fitness of the English atmosphere for respiration during the ten centuries that slaves had lived in England.

I desire to call the attention of the Senate to some passages in that celebrated decision, in answer to another proposition which the Senators who are opposing this bill assume in nearly all their arguments, and that is, that slavery is the creature of positive legislation, and cannot be established by customary law or usage. That point was raised in this case, and Lord Stowell thus disposed of it:

"Having adverted to most of the objections that arise to the revival of slavery in the colonies, I have first to observe that it returns upon the slave by the same title by which it grew up originally. It never was in Antigua the creature of *law*, but of that *custom* which operates with the force of law; and when it is cried out that *malus usus abolendus est*, it is first to be proved that, even in the consideration of *England*, the use of slavery is considered as a *malus usus* in the colonies. Is that a *malus usus* which the court of the King's privy council and the courts of chancery are every day carrying into full effect in all considerations of property—in the one by appeal, and in the other by original causes—and all this enjoined and confirmed by statutes? Still less is it to be considered as a *malus usus* in the colonies themselves, where it has been incorporated into full life and establishment—where it is the system of the State and of every individual in it; and fifty years have passed without any authorized condemnation of it in *England* as a *malus usus* in the colonies."

This, sir, was fifty years after Lord Mansfield's speech in the Sommersett case.

"The fact is, that in England, where villenage of both sorts went into total decay, we had communication with no other country; and, therefore, it is triumphantly declared, as I have before observed, 'once a freeman ever a freeman,' there being no other country with which we had immediate connection, which at the time of suppressing that system we had any occasion to trouble ourselves about. But slavery was a very favored introduction into the colonies; it was deemed a great source of the mercantile interest of the country, and was, on that account, largely considered by the mother country as a great source of its wealth and strength. Treaties were made on that account, and the colonies compelled to submit to those treaties by the authority of this country. This system continued entire. Instead of being condemned as *malus usus*, it was regarded as a most eminent source of its riches and power. It was at a late period of the last century that it was condemned in England as an institution not fit to exist here, for reasons peculiar to our own condition; but it has been continued in our colonies, favored and supported by our own courts, which have liberally imparted to it their protection and encouragement. To such a system, whilst it is supported, I rather feel it to be too strong to apply the maxim, *malus usus abolendus est*. The time may come when this institution may fall in the colonies, as other institutions have done in other flourishing countries; but I am of opinion it can only be effected at the joint expense of both countries, for it is in a peculiar manner the crime of this country; and I rather feel it to be an objection to this species of emancipation, that it is intended to be a very cheap measure here by throwing the whole expense upon the country."—2 *Haggard's Reports*, 126 *et seq.*

After that decision had been rendered, Lord Stowell, who was at that time in correspondence with Judge Story, sent him a copy of it, and

wrote to him upon the subject of his judgment. No man will doubt the anti-slavery feelings and proclivities of Judge Story. He was asked to take the decision into consideration and give his opinion about it. Here are extracts from his answer:

"I have read, with great attention, your jugdment in the slave case. Upon the fullest consideration which I have been able to give the subject, I entirely concur in your views. If I had been called upon to pronounce a judgment in a like case, I should have certainly arrived at the same result."

That was the opinion of Judge Story in 1827; but, sir, whilst contending, as I here contend, as a proposition based in history, maintained by legislation, supported by judicial authority of the greatest weight, that slavery, as an institution, was protected by the common law of these colonies at the date of the Declaration of Independence, I go further, though not necessary to my argument, and declare that it was the common law of the whole continent of North and South America alike. Why, Mr. President, the European continental powers, which joined and co-operated with Great Britain in the discovery and establishment of colonies on this continent, all followed the same views of policy. France, Spain, Portugal, and England, occupied the whole continent, North and South. The legislation of all of them was the same. Louis XIII, by royal edict, established slavery in all his colonies in America. Everybody knows that it was through the interference of Las Casas that the Spanish Crown inaugurated the slave trade with a view of substituting the servile labor of the African for that of the Indians, who had been reduced to slavery by their Spanish conquerors. As regards Portugal, she inaugurated the trade; she originally supplied all the colonies: and the Empire of Brazil to-day, with its servile labor, is the legitimate fruit of the colonial policy of the Portuguese Government in the sixteenth century. She began her trade in 1508, and some authors say even before the colonization of America in the fifteenth century.

I say that slavery was thus the common recognised institution of the New World. I do not thereby mean to admit for a moment that it was not the common law of the Old World when this nation was formed. Have we all forgotten that white slavery existed in England until a comparatively very recent period? It did not finally disappear until the reign of James II. What was that system of villenage, of which all the old law-writers speak? They were all slaves. These villeins were divided into two classes—villeins-regardant and villeins in gross—both slaves. The only difference between them was, that the villeins-regardant were attached to the soil; they could not be sold away from the glebe; they followed the conveyance of the estate into the hands of the new lord; but the villeins in gross were mere chattels, sold from hand to hand, just as negroes are sold at the present hour. If any gentleman is curious to see something on this subject, he will find a concise account of it in the first volume of the celebrated treatise of Mr. Spence, on the equity jurisdiction of the courts of chancery. That volume contains a very concise and admirable history of the English law. He will find there some statements in relation to the law of villenage in En-

gland. But, sir, a true picture, a fair picture of the state of the villeins of England, is nowhere better given than in the celebrated argument of Hargrave, the great lawyer who was the counsel for the slave in the Sommersett case. One passage will give us his description of what the villein was under the common law of England:

"The condition of a villein had most of the incidents which I have before described in giving the idea of slavery in general. His service was uncertain and indeterminate, such as his lord thought fit to require; or, as some of our ancient writers express it, he knew not in the evening what he was to do in the morning; he was bound to do whatever he was commanded. He was liable to beating, imprisonment, and every other chastisement his lord might prescribe, except killing and maiming. He was incapable of acquiring property for his own benefit, the rule being '*quicquid acquiritur servo, acquiritur domino.*' He was himself the subject of property; as such, saleable and transmissible. If he was a villein regardant, he passed with the manor or land to which he was annexed, but might be severed at the pleasure of his lord. If he was a villein in gross, he was a hereditament or a chattel real, according to his lord's interest; being descendible to the heir where the lord was absolute owner, and transmissible to the executor where the lord had only a term of years in him. Lastly, the slavery extended to the issue, if both parents were villeins, or if the father was a villein; our law deriving the condition of the child from that of the father, contrary to the Roman law, in which the rule was '*partus sequitur ventrem.*' The origin of villenage is principally to be derived from the wars between our British, Saxon, Danish and Norman ancestors, whilst they were contending for the possession of this country. Judge Fitzherbert, in his reading on the fourth of Edw. I, stat. 1, entitled '*extenta manerii*,' supposes villenage to have commenced at the Conquest, by the distribution then made of the forfeited lands, and of the vanquished inhabitants resident upon them. But there were many bondmen in England before the Conquest, as appears by the Anglo-Saxon laws regulating them; and therefore it would be nearer the truth to attribute the origin of villeins as well to the preceding wars and revolutions in this country as to the effects of the Conquest."—20 *Howell's State Trials*, pp. 36-7.

I say, then, sir, that white slavery was protected by the common law of England down to James II; and if any man is peculiarly curious to learn the process by which it gradually disappeared, and has any taste for antiquarian lore, if he will look to the appendix to the twentieth volume of Howell's State Trials, he will find a commission issued by Queen Elizabeth to Cecil, Lord Burleigh, and Sir William Mildmay, giving them authority to go into her counties of Gloucester, Cornwall, Devon, and Somerset, and there to manumit her slaves, by getting from them *a reasonable price for their liberty*. That is the way slavery was abolished in England. It was abolished by the gradual emancipation of the slaves, resulting from the sale, by the lord to the slave himself, of his right over him. I will read a passage of this commission:

"ELIZABETH, by the grace of God, &c. To our right trustie and well-beloved counsellor, sir W. Cecill of the Garter Knighte, lord Burghley and Highe Treasorer of England, and to our trustie and right well-beloved counsellor, sir Walter Mildmay, Knight, chauncellor, and under treasorer of our exchequer, greetinge.

"Whereas, divers and sundrie of our poore faithfull and loyal subjectes, being borne bonde in blode and regardaunt to divers and sundrie our manors and possessions within our realm of England, have made humble suyte unto us to be manumysed, enfraunchised, and made free, with theire children and sequells, by reason whereof they, theire children and sequells, may become more apte and fitte members for the service of us and of our common wealthe.

"We therefore, having tender consideration of their said sute, and well considering the same to be acceptable to Almightie God"——

Now, we all suppose she is going to give them their freedom. Not at all. She is willing to sell them to themselves *at a fair price;* and so she goes on:

"And we do commytt and give unto you full power and autheritie by these presents, to accepte, admitte and receive to be manumysed, enfraunchised, and made free, suche and so many of our

bondmen and bondwomen in blood, with all and every theire children and sequells, theire goodes, landes, tenementes, and hereditaments, as are now apperteynynge or regardaunte to all or any of our manors, landes, tenementes, possessions, or hereditaments within the said several counties of Cornwall, Devon, Somersett, and Gloucester, as to you by your discretions shall seme mete and convenient, *compoundinge with them for suche reasonable fines or sommes of money to be taken and received to our use* for the manumyssion and enfraunchisement, and for the possessions, and enjoying of all and singular theire landes, tenementes, hereditaments, goodes and chattells whatsoever, as you and they can aggree for the same after your wisdomes and discretions."

Here, then, was slavery in its widest and broadest acceptation, in Great Britain, in the time of Elizabeth, and it never finally disappeared from the kingdom until the reign of James II.

How was it in France? In France they had a system of white slaves of the same kind. There they called them *gens de main morte*—mortmain people, because they belonged to the estates; and they, in 1779, were enfranchised by royal edict, commencing in these words:

"We have been greatly affected by the consideration that a large number of our subjects, still attached as slaves to the glebe, are regarded as forming part of it as it were; that deprived of the liberty of their persons, and of the rights of property, they themselves are considered as the property of their lords; that they have not the consolation of bequeathing their goods, and that, except in a few cases rigorously circumscribed, they cannot even transmit to their own children the fruits of their own labor."

Thus fell the last remnant of white slavery in France in 1779, after our independence.

As regards Spain, let any one who is in the habit of reading the literature of that country for the eighteenth century tell me if he remembers a solitary tale or romance of her authors in which some Moorish or negro slave is not introduced as the familiar inmate of the household. The remainder of the European continent is still governed with beneficent sway by the civil law; and all know that that law protects, in every aspect, the relation between master and slave.

Thus, Mr. President, I say, that even if we admit for the moment that by the common law of the nations which colonized this continent, the institution of slavery, at the time of our independence, was dying away by manumissions, either gratuitous or for a price granted by those who held the people as slaves; yet so far as the continent of America was concerned, North and South, there did not breathe a being who did not know that a negro, under the common law of the continent, was merchandise, was property, was a slave; and that he could only extricate himself from that *status*, stamped upon him by the common law of the country, by positive proof of manumission. No man was bound to show title to his negro slave. The negro was bound to show manumission under which he had acquired his freedom, by the common law of every colony. Why, sir, can any man doubt, is there a gentleman here, even the Senator from Maine, who doubts that if, after the Revolution, the different States of this Union had not passed laws upon the subject to abolish slavery, to subvert this common law of the continent, every one of these States would be slave States yet? How came they free States? Did not they have this institution of slavery imprinted upon them by the power of the mother country? How did they get rid of it? All, all must admit that they had to pass positive acts of legis-

lation to accomplish this purpose. Without that legislation they would still be slave States. What, then, becomes of the pretext that slavery only exists in those States where it was established by positive legislation, that it has no inherent vitality out of those States, and that slaves are not considered as property by the Constitution of the United States?

When the delegates of the several colonies, which had thus asserted their independence of the British Crown, met in convention, the decision of Lord Mansfield in the Sommersett case was recent—known to all. At the same time, a number of the northern colonies had taken incipient steps for the emancipation of their slaves. Here permit me to say, sir, that, with a prudent regard to what the Senator from Maine [Mr. HAMLIN] yesterday called the "sensitive pocket-nerve," they all made these provisions prospective. Slavery was to be abolished after a certain future time—just enough time to give their citizens convenient opportunity for selling the slaves to southern planters, putting the money in their pockets, and then sending to us here, on this floor, representatives who flaunt in robes of sanctimonious holiness; who make parade of a cheap philanthropy, exercised at our expense; and who say to all men, "Look ye now, how holy, how pure we are; you are polluted by the touch of slavery; we are free from it."

I say that was the position of the delegates when they met in convention; and it was necessary to make provision in relation to slaves. In the northern States slavery was about to be abolished. If Lord Mansfield's decision in the Sommersett case was to be followed as the rule, it was obvious that southern slaves were exposed to being plundered, robbed, carried away from their masters. On the other hand, by a compromise between the North and the South, slaves had entered into the representative basis of the country. What was to be done? Two clauses were put in the Constitution, one to guaranty to the South its property—it provided for the return to the southern owner of the slave that was recognised as his property; another clause for the North, to prevent a disturbance of the representative basis by importation of slaves. The North said to the South, "You shall not increase your laboring population by importation after twenty years, because we of the North have an interest in that question; we have agreed they shall be counted in the representative basis, and we want protection as well as you." That is all the Constitution says on this subject. It guaranties to the South the sanctity of its peculiar property; it protects the North against any abnormal augmentation of the number of slaves in the South which might give them an undue preponderance in the representation of the different States of the Union.

Now, sir, because the Supreme Court of the United States says—what is patent to every man who reads the Constitution of the United States—that it does guaranty property in slaves, it has been attacked with vituperation here, on this floor, by Senators on all sides. Some have abstained from any indecent, insulting remarks in relation to the court. Some have confined themselves to calm and legitimate argument. To them I am about to reply. To the others I shall have something to say a little later. What says the Senator from Maine? [Mr. FESSENDEN.]

He says:

"Had the result of that election been otherwise, and had not the [Democratic] party triumphed on the dogma which they had thus introduced, we should never have heard of a doctrine so utterly at variance with all truth; so utterly destitute of all legal logic; so founded on error, and unsupported by anything like argument, as is the opinion of the Supreme Court."

He says, further:

"I should like, if I had time, to attempt to demonstrate the fallacy of that opinion. I have examined the view of the Supreme Court of the United States on the question of the power of the Constitution to carry slavery into free territory belonging to the United States, and I tell you that I believe any tolerably respectable lawyer in the United States can show, beyond all question, to any fair and unprejudiced mind, that the decision has nothing to stand upon except assumption, and bad logic from the assumptions made. The main proposition on which that decision is founded; the corner-stone of it, without which it is nothing, without which it fails entirely to satisfy the mind of any man, is this: that the Constitution of the United States recognises property in slaves, and protects it as such. I deny it. It neither recognises slaves as property, nor does it protect slaves as property."

The Senator here, you see, says that the whole decision is based on that assumption, which he pronounces false. He says that the Constitution does not recognise slaves as property, nor protect them as property, and his reasoning, a little further on, is somewhat curious. He says:

"On what do they found the assertion that the Constitution recognises slaves as property? On the provision of the Constitution by which Congress is prohibited from passing a law to prevent the African slave trade for twenty years; and therefore they say the Constitution recognises slaves as property."

I should think that was a pretty fair recognition of it. On this point the gentleman declares:

"Will not anybody see that this constitutional provision, if it works one way, must work the other? If, by allowing the slave trade for twenty years, we recognise slaves as property, when we say that at the end of twenty years we will cease to allow it, or may cease to do so, is not that denying them to be property after that period elapses?"

That is the argument. Nothing but my respect for the logical intellect of the Senator from Maine could make me treat this argument as serious, and nothing but having heard it myself would make me believe that he ever uttered it. What, sir! The Constitution of our country says to the South, "you shall count as the basis of your representation five slaves as being three white men; you shall be protected in the natural increase of your slaves: nay, more, as a matter of compromise you may increase their number if you choose, for twenty years, by importation; when these twenty years are out, you shall stop." The Supreme Court of the United States says, "well: is not this a recognition of slavery, of property in slaves?" "Oh, no," says the gentleman, "the rule must work both ways: there is a converse to the proposition." Now, sir, to an ordinary, uninstructed intellect, it would seem that the converse of the proposition was simply that at the end of twenty years you should not any longer increase your numbers by importation; but the gentleman says the converse of the proposition is that at the end of the twenty years, after you have, under the guarantee of the Constitution, been adding by importation to the previous number of your slaves, then all those that you had before, and all those that, under that Constitution, you have imported, cease to be recognised as

property by the Constitution, and on this proposition he assails the Supreme Court of the United States—a proposition which he says will occur to anybody!

Mr. FESSENDEN. Will the Senator allow me?

Mr. BENJAMIN. I should be very glad to enter into this question with the Senator now, but I fear it is so late that I shall not be able to get through to-day.

Mr. FESSENDEN. I suppose it is of no consequence.

Mr. BENJAMIN. What says the Senator from Vermont, [Mr. COLLAMER,] who also went into this examination somewhat extensively? I read from his printed speech:

"I do not say that slaves are never property. I do not say that they are, or are not. Within the limits of a State which declares them to be property, they are property, because they are within the jurisdiction of that government which makes the declaration; but I should wish to speak of it in the light of a member of the United States Senate, and in the language of the United States Constitution. If this be property in the States, what is the nature and extent of it? I insist that the Supreme Court have often decided, and everybody has understood, that slavery is a local institution, existing by force of State law; and of course that law can give it no possible character beyond the limits of that State. I shall, no doubt, find the idea better expressed in the opinion of Judge Nelson, in this same Dred Scott decision. I prefer to read his language. He declares:

"'Every State or nation possesses an exclusive sovereignty and jurisdiction within her own territory; and her laws affect and bind all property and persons residing within it. It may regulate the manner and circumstances under which property is held, and the condition, capacity, and state of all persons therein; and also the remedy and the modes of administering justice. And it is equally true that no State or nation can affect or bind property out of its territory, or persons not residing within it. No State, therefore, can enact laws to operate beyond its own dominions; and, if it attempts to do so, may be lawfully refused obedience. Such laws can have no authority extra-territorially. This is the necessary result of the independence of distinct and separate sovereignties.'

"Here is the law; and under it exists the law of slavery in the different States. By virtue of this very principle it cannot extend one inch beyond its own territorial limits. A State cannot regulate the relation of master and slave, of owner and property, the manner and title of descent, or anything else, one inch beyond its territory. Then you cannot, by virtue of the law of slavery, if it makes slaves property in a State, if you please, move that property out of the State. It ends whenever you pass from that State. You may pass into another State that has a like law; and if you do, you hold it by virtue of that law; but the moment you pass beyond the limits of the slaveholding States, all title to the property called property in slaves there ends. Under such a law slaves cannot be carried as property into the Territories, or anywhere else beyond the States authorizing it. It is not property anywhere else. If the Constitution of the United States gives any other and further character than this to slave property, let us acknowledge it fairly, and end all strife about it. If it does not, I ask, in all candor, that men on the other side shall say so, and let this point be settled. What is the point we are to inquire into? It is this: does the Constitution of the United States make slaves property beyond the jurisdiction of the States authorizing slavery? If it only acknowledges them as property within that jurisdiction, it has not extended the property one inch beyond the State line; but if, as the Supreme Court seems to say, it does recognise and protect them as property further than State limits, and more than the State laws do, then, indeed, it becomes like other property. The Supreme Court rest this claim upon this clause of the Constitution: 'No person held to service or labor in one State under the laws thereof, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.' Now the question is, does that guaranty it? Does that make it the same as other property? The very fact that this clause makes provision on the subject of persons bound to service, shows that the framers of the Constitution did not regard it as other property. It was a thing that needed some provision; other property did not. The insertion of such a provision shows that it was not regarded as other property. If a man's horse stray from Delaware into Pennsylvania, he can go and get it. Is there any provision in the Constitution for it? No. How came this to be there, if a slave is property? If it is the same as other property, why have any provision about it?"

It will undoubtedly have struck any person, in hearing this passage read from the speech of the Senator from Vermont, whom I regret not

o see in his seat to-day, that the whole argument, ingeniously as it is put, rests upon this fallacy—if I may say so with due respect to him—that a man cannot have *title* in property wherever the law does not give him a *remedy* or *process* for the assertion of his title; or, in other words, his whole argument rests upon the old confusion of ideas which considers a man's right and his remedy to be one and the same thing. I have already shown to you, by the passages I have cited from the opinions of Lord Stowell and of Judge Story, how they regard this subject. They say that the slave who goes to England, or goes to Massachusetts, from a slave State, is still a slave—that he is still his master's property; but that his master has lost control over him, not by reason of the cessation of his *property*, but because those States grant no *remedy* to the master by which he can exercise his control.

There are numerous illustrations upon this point—illustrations furnished by the copy-right laws, illustrations furnished by patent laws. Let us take a case—one that appeals to us all. There lives now a man in England who from time to time sings to the enchanted ear of the civilized world strains of such melody that the charmed senses seem to abandon the grosser regions of earth, and to rise to purer and serener regions above. God has created that man a poet. His inspiration is his; his songs are his by right divine; they are his property, so recognised by human law. Yet here in these United States men steal Tennyson's works and sell his property for their profit; and this because, in spite of the violated conscience of the nation, we refuse to give him protection for his property.

Examine your Constitution; are slaves the only species of property there recognised as requiring peculiar protection? Sir, the inventive genius of our brethren of the North is a source of vast wealth to them and vast benefit to the nation. I saw a short time ago in one of the New York journals, that the estimated value of a few of the patents now before us in this Capitol for renewal was $40,000,000. I cannot believe that the entire capital invested in inventions of this character in the United States can fall short of one hundred and fifty or two hundred million dollars. On what protection does this vast property rest? Just upon that same constitutional protection which gives a remedy to the slave owner when his property is also found outside of the limits of the State in which he lives.

Without this protection, what would be the condition of the northern inventor? Why, sir, the Vermont inventor protected by his own law would come to Massachusetts, and there say to the pirate who had stolen his property, "render me up my property or pay me value for its use." The Senator from Vermont would receive for answer, if he were the counsel of this Vermont inventor, "Sir, if you want protection for your property go to your own State; property is governed by the laws of the State within whose jurisdiction it is found; you have no property in your invention outside of the limits of your State; you cannot go an inch beyond it." Would not this be so? Does not every man see at once that the right of the inventor to his discovery, that the right of the poet to his inspiration, depends upon those principles of

eternal justice which God has implanted in the heart of man, and that wherever he cannot exercise them it is because man, faithless to the trust that he has received from God, denies them the protection to which they are entitled?

Sir, follow out the illustration which the Senator from Vermont himself has given; take his very case of the Delaware owner of a horse riding him across the line into Pennsylvania. The Senator says: "Now, you see that slaves are not property like other property; if slaves were property like other property, why have you this special clause in your Constitution to protect a slave? You have no clause to protect the horse, because horses are recognised as property everywhere." Mr. President, the same fallacy lurks at the bottom of this argument, as of all the rest. Let Pennsylvania exercise her undoubted jurisdiction over persons and things within her own boundary; let her do as she has a perfect right to do—declare that hereafter, within the State of Pennsylvania, there shall be no property in horses, and that no man shall maintain a suit in her courts for the recovery of property in a horse; and where will your horse-owner be then? Just where the English poet is now; just where the slaveholder and the inventor would be if the Constitution, foreseeing a difference of opinion in relation to rights in these subject-matters, had not provided the remedy in relation to such property as might easily be plundered. Slaves, if you please, are not property like other property in this: that you can easily rob us of them; but as to the *right* in them, that man has to overthrow the whole history of the world, he has to overthrow every treatise on jurisprudence, he has to ignore the common sentiment of mankind, he has to repudiate the authority of all that is considered sacred with man, ere he can reach the conclusion that the person who owns a slave, in a country where slavery has been established for ages, has no other property in that slave than the mere title which is given by the statute law of the land where it is found.

I never heard this question disputed before; I never heard a suggestion that slaves were not protected as property by the Constitution of the United States till I heard it from the Senator from Maine here the other day. In the sixteenth volume of Peters's Reports there is the report of a case which occurred between the States of Maryland and Pennsylvania. It was elaborately argued. The Commonwealth of Pennsylvania sent her attorney general into the room below to affirm her right to the legislation which she had passed. Although the suit was in the name of an individual, really it was the rights of Maryland that were concerned, and it was the State of Maryland that was interested in the decision. The case is known by the title in the law-books of Prigg *versus* the State of Pennsylvania. Every judge on the bench gave his decision in that case. Every judge on the bench concurred in the decision. Judge Story delivered the opinion of the court, the other judges delivering their individual opinions, where they did not precisely agree with the general language of the court. Amongst those judges was judge McLean, one of the dissentient judges in the Dred Scott case. Let us hear what he says about slaves being

property under the Constitution. I shall read a short passage, a paragraph or two only. I take this out of his statement of his opinion at page 661, of 16th Peters. He quotes the clause of the Constitution that protects us in our rights to fugitive slaves, and he says:

"It was designed to protect the rights of the master, and against whom? Not against the State, nor the people of the State in which he resides; but against the people and the legislative action of other States, where the fugitive from labor might be found. Under the confederation, the master has no legal means of enforcing his RIGHTS in a State opposed to slavery. A disregard of *rights* thus asserted, was deeply felt in the South. It produced great excitement, and would have led to results destructive of the Union. To avoid this, the constitutional guarantee was essential."

Now, what is this guarantee? He tells us, at page 671 of the same volume:

"I cannot perceive how any one can doubt that the remedy given in the Constitution, if, indeed, it give any remedy without legislation, was designed to be a peaceful one; a remedy sanctioned by judicial authority; a remedy guarded by the forms of law. But the inquiry is reiterated, is not the master entitled to his *property?* I answer that he is. *His right is guaranteed by the Constitution;* and the most summary means for its enforcement is found in the act of Congress. And neither the State nor its citizens can obstruct the prosecution of this right."

That was Judge McLean's language. When I find language like this, even from the minority of the court in the Dred Scott case, when I find the entire court, man for man, concurring that the constitutional rights of the South are guarantied in slaves as property by this clause in the Constitution, I must express my intense surprise at hearing the Senator from Maine declare that the Dred Scott decision was not to be supported, because it rested for a corner-stone on the assumption that slaves were recognised by the Constitution as property, which assumption he denied.

But, Mr. President, all these gentlemen who thus fail in the slightest degree to impugn the opinion of the court by argument, attempt to shake its authority by an assertion entirely destitute of the slightest foundation. Every Senator who has spoken on the subject of this decision has declared that the court said it was without jurisdiction to determine it, and then determined it. I say that all the judges declared that they had jurisdiction of the merits, and determined that point before they decided the merits; and I am prepared to prove it. There was not a judge on the bench who did not declare that he had jurisdiction of the merits. There were some of the judges who declared that they had jurisdiction of no other question, and Judge McLean was one of them. He said the question of jurisdiction was not before them at all, and so did Judge Catron; and both those judges said that the court had nothing before them but the merits. Every judge said that he had the merits before him. I will prove it.

When this decision was first published; when, as I am sorry to say, two of the judges of that court so far forgot the proprieties of their judicial station as to send forth a minority opinion to forestall the public judgment, and to produce among the people of the country the impression that the integrity of their judiciary was no longer to be relied upon, and thus to subvert one of the foundations of our Government; when those opinions first went abroad, they were seized upon by the

Republican presses through the land, and it was said everywhere, "this court is usurping power; it has no such power as that which it assumes; it first says it has no jurisdiction, and then, after declaring itself to be without power over the subject-matter, presumes to determine it." Every Senator on this side of the Chamber, who has spoken, has repeated this. I want to nail the assertion to the counter; the coin is false.

Mr. FESSENDEN. The Senator will allow me to make a suggestion as to the statement of the court.

Mr. BENJAMIN. Undoubtedly.

Mr. FESSENDEN. I understand the Senator to assert that two judges sent forth their opinions. Did they do anything more than put their opinions on file in the clerk's office, where they were copied?

Mr. BENJAMIN. I think they did; but I am not going to enter into that now.

Mr. FESSENDEN. I understand it is not the fact. They simply put their opinions on file in the clerk's office, as was the rule of the court; the others kept theirs back.

Mr. BENJAMIN. The gentleman is mistaken about that.

Mr. FESSENDEN. I am so instructed.

Mr. BENJAMIN. The gentleman is mistaken. The copies of those opinions were not furnished by the clerk of the court.

Mr. FESSENDEN. They were not sent forth by the judges, that I am aware of.

Mr. BENJAMIN. I do not mean to say that the judges themselves took their opinions and carried them to the printing offices; but they furnished them for publication. It is idle to deny it. Everybody knows it.

Now, sir, I come back to the point from which I started. I say that every judge of the court, in his opinion, declared that he had jurisdiction—jurisdiction over the merits of this case. First, let us take the Chief Justice, who was the organ of the court. I cannot read all the reasoning; I should detain the Senate too long if I were to do so, and I see too many visible signs of impatience about me to desire to detain them any longer. The Chief Justice said this:

"But, before we proceed to examine this part of the case, it may be proper to notice an objection taken to the judicial authority of this court to decide it; and it has been said, that as this court has decided against the jurisdiction of the circuit court [not its own jurisdiction] on the plea in abatement, it has no right to examine any question presented by the exception; and that anything it may say upon that part of the case will be extra-judicial, and mere *obiter dicta*.

"This is a manifest mistake; there can be no doubt as to the jurisdiction of this court to revise the judgment of a circuit court, and to reverse it for any error apparent on the record, whether it be the error of giving judgment in a case over which it had no jurisdiction, or any other material error; and this, too, whether there is a plea in abatement or not."—19 *Howard*, 427.

That is the language of the Chief Justice, the organ of the court, who delivered the opinion of the majority. Judge Wayne says the same thing, at page 456. Judge Nelson says, in giving his opinion:

"In the view we have taken of the case, it will not be necessary to pass upon this question, [of jurisdiction,] and we shall therefore proceed at once to an examination of the case upon its merits."—*Ibid.* p. 458.

Judge Grier says:

"The record shows a *prima facie* case of jurisdiction, requiring the court to decide all the questions properly arising in it; and as the decision of the pleas in bar shows that the plaintiff is a slave, and therefore not entitled to sue in a court of the United States, the form of the judgment is of little importance."—*Ibid.* p. 469.

Mr. Justice Daniel (p. 482) says that the questions arising on the pleas in bar might be passed by after determining the plea in abatement; but he does give his opinion on the merits, although he thought it would be possible to decide the case without a decision on its merits.

Mr. Justice Campbell says:

"My opinion in this case is not affected by the plea to the jurisdiction, and I shall not discuss the questions it suggests. The claim of the plaintiff to freedom depends upon the effect to be given to his absence from Missouri, in company with his master, in Illinois and Minnesota, and this effect is to be ascertained by a reference to the laws of Missouri."—*Ibid.* p. 493.

He determines nothing but the merits.

Mr. Justice Catron (p. 518) says that the judgment of the circuit court upon the plea in abatement—that is, the plea to the jurisdiction—was not, in his opinion, open to examination in the Supreme Court, and that they had nothing before them but the merits.

Mr. Justice McLean says:

"The plea to the jurisdiction is not before us, on this writ of error. A demurrer to the plea was sustained, which ruled the plea bad, and the defendant, on leave, pleaded over.

"The decision on the demurrer was in favor of the plaintiff; and as the plaintiff prosecutes this writ of error, he does not complain of the decision on the demurrer. The defendant might have complained of this decision, as against him, and have prosecuted a writ of error to reverse it. But as the case under the instruction of the court to the jury was decided in his favor, of course he had no ground of complaint."—*Ibid.* p. 530.

Judge McLean then says that the court had no question of jurisdiction before it at all, nothing but the merits.

Mr. Justice Curtis says the same thing:

"That as the plea to the jurisdiction in this case shows no facts, except that the plaintiff was of African descent, and his ancestors were sold as slaves, and as these facts are not inconsistent with his citizenship of the United States, and his residence in the State of Missouri, the plea to the jurisdiction was bad, and the judgment of the circuit court overruling it was correct."—*Ibid.* p. 588.

And, therefore, he goes on to determine the merits. Now, shall I detain the Senate by reading passages from the speeches which I hold in my hand, and in which every Senator in succession, who has spoken of this decision, has spread before the country the bold, plain statement that the Supreme Court first decided that it had no jurisdiction, and then went on to determine the merits?

Mr. FESSENDEN. I must beg the Senator to give me leave to explain, because I do not know that I shall have an opportunity to answer him.

Mr. BENJAMIN. I will yield for a few minutes, of course.

Mr. FESSENDEN. I merely wish to explain on this specific point. I do not know what particular language I used myself in the speech I made on this subject. I remember very well the idea which I meant to convey; and I presume that idea is conveyed in sufficiently distinct language. It is this: I did not speak of the individual judges, but I

said that, in the opinion of the court, which was delivered by Judge Taney, and to which only I alluded, the point decided in the first place, was, that the court below, and consequently the court above, had no jurisdiction of the case, for the reason that the party plaintiff was not qualified to sue; he had no standing in the court. That was the decision; and the inference I drew (I do not know whether I used the term or not) was, that the court admitted they had no jurisdiction. I did not mean to say that they admitted in terms that they had no jurisdiction beyond that, and over the merits of the case; but that the substance of their decision was, that the plaintiff having no standing in the court whatever, the case must consequently be dismissed; and that, whatever they undertake to say afterwards, was mere assertion.

I know they go on to give a reason for expressing their opinion, and that is, that in all writs of error they may confine themselves to the particular error which they find in the record below, or do not find, as the case may be; but that, in certain cases, they may look into other parts of the record in order to preclude the necessity of revising the case afterwards. The Senator, however, is perfectly aware that this idea has been answered over and over again by the remark, that the case could not possibly come before them again, when the decision was that the plaintiff had and could have no standing in court. What my particular language was I do not undertake to say. I may have said that the court admitted they had no jurisdiction of the case; not that they admitted it in terms, but by the original decision they made that the plaintiff had no right in the court below, and consequently could have none in the court above. I did not undertake to dispute that the Supreme Court of the United States had power to revise the decision of the court below, if properly brought there; but I say, when they decided that the plaintiff had no standing in the court originally, there was an end of the whole matter, and the court could not properly, and it was contrary to all custom, go into an examination of other questions that did not necessarily arise. That is the position I mean to take. I did not go into it at length, as perhaps I may hereafter; but the Senator misrepresents me, not intentionally; he misunderstands me if he asserts that I said, or meant to be understood as saying, that the court had in terms admitted that they had no jurisdiction of any question beyond the first. He may read the language of my speech, if he sees fit to do so.

Mr. BENJAMIN. It is rather late in the day, and I have not time to go at any length into this discussion, but I have the Senator's language before me; I have the language of the Senator from New York [Mr. SEWARD,] and of the Senator from Vermont [Mr. COLLAMER.] Every one of those Senators said that the Supreme Court had decided that it had no jurisdiction. The language is here; and now what does the Senator from Maine answer to that position? That although the Supreme Court decided it had jurisdiction, in his judgment its decision was wrong!

Mr. FESSENDEN. That is not what I said.

Mr. BENJAMIN. It cannot be anything else. The Supreme Court

of the United States was the only tribunal to determine in the last resort whether it had jurisdiction or not over the question. It determined that it had. The Senator says it began by determining that the plaintiff in the court below had no right to come into the court, and by reason thereof determined that the circuit court had no jurisdiction, and he puts in himself that consequently the Supreme Court had no jurisdiction. It is precisely his "consequently" that Chief Justice Taney says is a manifest mistake. Here is what the honorable Senator from Maine said:

"It is said that this question has been carried to the Supreme Court of the United States and settled there. Does the honorable Senator from Louisiana"——

The Senator turned to me. We are always having little legal quarrels in this corner between ourselves, particularly on the slavery question.

"Does the honorable Senator from Louisiana, as a lawyer, undertake to tell me that the question has been settled by a judicial decision in that court? Did that question ever arise and present itself to the mind of the court with reference to any necessity of the case? To what extent does the honorable Senator, or anybody else who is a lawyer, undertake to say that the decision of the court is binding? It is binding so far, and so far alone, as it can issue its mandate. Its opinion is of force only upon the question which settles the cause."

Who is to say what the question is that settles the cause in the opinion of the court? Is it the court or the Senator?

Mr. FESSENDEN. The court had settled it originally.

Mr. BENJAMIN. The court said, "in our judgment, there are two points which settle the cause; one is the jurisdiction, the other the merits." The Senator says that by the time they had got through stating the first half of their opinion, he has a right to shut their mouths and say, "you shall not go on and give any other reason; the reason you have given is enough; you cannot say another word." This is a most curious proposition to maintain to anybody that has ever heard decrees or opinions rendered in courts of justice. Hear the Senator again:

"Am I bound to recognise opinions that may be advanced by any set of judges, in any court, simply because, after they have decided a cause, they undertake to give their opinions? They may be bad men, they may be weak men, but their mandate in the cause before them must be obeyed; and I will go as far and as readily as any man to obey the mandate of any court to which I am bound to render obedience; and I am bound to render obedience to the Supreme Court of the United States; but when they undertake to settle questions not before them, I tell them those questions are for me as well as for them."

Thus, sir, the honorable Senator declares, point blank, that this question was not before the court. They consider that it was; the dissenting judges said it was; everybody there said it was; everybody but the Senator from Maine and his worthy colleagues, the Senator from New York and the Senator from Vermont. This notion was first started by some indecorous expressions in the opinions of the dissenting judges. They themselves, declaring that they had jurisdiction over the subject-matter, suggested that they would not consider the opinion of the other judges binding, because, in the opinion of other judges, the court below had no jurisdiction; "but," said Judge Taney, "this question is before me on its merits: I must decide it; it is my duty to decide it; I cannot avoid the duty." That is the language, if the gentleman will refer to it.

Now, Mr. President, I come to another point in my argument, which I approach with extreme pain, with unfeigned regret. From my earliest childhood I have been taught to revere the judges of the highest court in the land, as men selected to render justice between litigants, not more by reason of their eminent legal acquirements than because of a spotless purity of character, an undimmed lustre of reputation, which removed them far, far beyond even a doubt of their integrity. The long line of eminent judicial worthies, which seemed to have culminated in a Marshall, has been continued in the person of one upon whom the highest eulogium that can be pronounced is to say that he was eminently worthy of being the successor of that illustrious judge. I know not, Mr. President, whether you, as I, have had the good fortune to see that magistrate in the administration of justice in his own circuit, or in the court sitting below us, of which he is the honored chief. I know not, sir, whether it has been your good fortune, as it has been mine, to hear the expressions of affectionate reverence with which he is spoken of by the people amongst whom he has passed his pure, his simple, and his spotless life. I know not, sir, whether you have listened, as I have, with interest to the expressions of respect and admiration that come from the members of his bar in their familiar intercourse with each other—spontaneous tributes, worth a thousand labored eulogies, to his eminent sagacity, to his vast legal learning, to the mild and serene dignity of his judicial deportment—above all, sir, above all, to the conscientious, earnest, almost painful sense of responsibility with which he holds the scale of justice in even and impartial hand between the litigants whose rights depend upon his judgment.

Mr. President, he is old, very old. The infirmities of age have bowed his venerable form. Earth has no further object of ambition for him; and when he shall sink into his grave, after a long career of high office in our country, I trust that I do not rudely or improperly invade the sanctity of private life in saying that he will leave behind him, in the scanty heritage that shall be left for his family, the noblest evidence that he died as he had lived, a being honorable to the earth from which he sprang, and worthy of the heaven to which he aspired.

This man, sir, thus beloved, thus revered, thus esteemed, has been compared upon this floor to the infamous Jeffreys, by the Senator from Maine, [Mr. HAMLIN.] This man has been charged by the Senator from New York [Mr. SEWARD] with a corrupt coalition with the Chief Magistrate of the Union. He charges, in fact—not always in direct language, but partly by bold assertion and partly by insidious suggestions—that the Supreme Executive Magistrate of the land, and the judges of our highest court, and the parties to the Dred Scott case, got up a mock trial—that they were all in common collusion to cheat the country. He represents the venerable Chief Magistrate of our country, whose reputation hitherto has been beyond reproach—he represents the venerable Chief Justice—as enacting a solemn farce, in the face of the American people, on the eastern portico of this Capitol; and he tells us, that on the day when that great sea of upturned faces was here presented, all looking on the solemn pageant that was passing before them, the Chief

Justice of the nation was whispering into the ear of the President the terms of this nefarious bargain—and that, too, at the very moment when the former was administering and the latter taking the oath of office, by which the high majesty of Heaven was invoked as witness to the purity of his intentions in the administration of the government of his country!

Mr. President, accursed, thrice accursed, is that fell spirit of party which desecrates the noblest sentiments of the human heart; and which, in the accomplishment of its unholy purposes, hesitates at no reckless violence of assault on all that is held sacred by the wise and good. It was difficult, extremely difficult, for us all to sit here and hear what was said, and observe the manner in which it was said, and repress the utterance of the indignation that boiled up within us. All this is charged by the Senator without the proof of a solitary fact, without the assertion even of a fact, on which to base the foul charge. Luckily, sir, luckily for us, these eminent men are too highly placed in the reverence, the estimation, and the regard of the American people, to have their bright escutcheon injured by such attacks as these. Mr. President, in olden times a viper gnawed a file.

Although it may not be possible to make direct answers to all these insinuations, because no fact is even suggested on which they rest, there are some of them in relation to which I have the authentic evidence upon my desk in proof of their falsity.

Was this case got up? What are the facts? Men should be a little careful in making such accusations as these; unless, indeed, they care not whether they be true or false, being intended to answer the same purpose, whether the one or the other. This case was got up, was it? By accident or design? In the exquisitely decorous and appropriate language of the Senator from New York, the Chief Justice of the United States and the Chief Magistrate of the Union were gambling at cards for the case, and Dred Scott was dummy in the imaginary game! What truth is there in these insinuations of design? Why, sir, Dred Scott had sought his freedom by the assertion of his rights in the State courts of Missouri years before the Kansas-Nebraska act was ever suggested, and years before the President of the United States was even a candidate for office; years before he was even Minister to England.

This case was determined in the supreme court of the State of Missouri, in 1852, adversely to Dred Scott, and was remanded to the lower court for further trial. Mr. Buchanan had, I believe, not then gone to England. The Kansas bill had not been heard of, and was not in the imagination of any man. When the case got back into the lower court, the counsel for Dred Scott, finding that the opinion of the supreme court of the State was adverse to his rights, withdrew his case from the State court, and endeavored to better his client's chances by going into another jurisdiction. That is the way the case got into the Federal court; and when was this? The case was carried into the Federal court in the city of St. Louis, in November, 1853, before even the meeting of the Congress which passed the Kansas-Nebraska act; of course months before Mr. DIXON, the Senator from Kentucky, first sprang upon the

country, by his amendment, the question in relation to the repeal of the Missouri compromise. Here is the record:

"Be it remembered that heretofore, to wit: on the second day of November, in the year of our Lord 1853, came the above named plaintiff, Dred Scott, by his attorney, and filed in the clerk's office of the circuit court of the United States for the Missouri district, the following declaration against the defendant, John F. A. Sandford."

Was that a case gotten up by design, between the President and the court here? It was never carried there until they had lost all chance in the State court; it was carried there as the last desperate resource of defeated counsel; eager to maintain what he conceived to be the rights of his client. Who was the counsel? The Senators from Missouri can tell us who R. M. Field, of St. Louis, is, and probably they will verify the assertion which I make here upon hear-say—I give it only upon hear-say—that he is one of the most determined Free-Soilers in the State of Missouri; has always declined to vote at elections until he was able to cast his vote for a Free-Soil candidate, and until he aided in the election of the Free-Soil Representative from the St. Louis district who now sits in the other Chamber.

This case, thus instituted in November, 1853, was determined in the court below, and a writ of error was taken to the Supreme Court of the United States, before the Kansas bill was passed, and whilst Mr. Buchanan was in England! When it reached the Supreme Court of the United States what became of it? What does the Senator from New York say became of it?

"The counsel who had appeared for the negro had volunteered from motives of charity, and, ignorant of course of the disposition which was to be made of the cause"——

—which the Senator had previously insinuated was gotten up by design—

—"had argued that his client had been freed from slavery by operation of the Missouri prohibition of 1820. The opposing counsel, paid by the defending slaveholder"——

I happen to know, however, whatever may be the fact with the other, that one of the opposing counsel was not paid by any slaveholder at all; that one of the opposing counsel volunteered as *amicus curiæ* by virtue of his position as head of the bar of the Supreme Court of the United States, by virtue of his position as ex-Attorney General of the United States, by virtue of his position as a compeer of the honorable Senator, and his former colleague on this floor from the State of Maryland, Mr. Reverdy Johnson. That gentleman volunteered in the case as *amicus curiæ*, because the whole section of the country to whose interests he had been devoted from his birth had an interest in this great question to be decided, and which, at the time of his volunteering in the case, he did not yet know to be represented by counsel. The honorable Mr. Geyer, of Missouri, afterwards entered his name of record, and appeared for the defendant.

Says the Senator from New York:

"The opposing counsel, paid by the defending slaveholder, had insisted, in reply, that that famous statute was unconstitutional. The mock debate had been heard in the chamber of the court in the basement of the Capitol, in the presence of the curious visitors at the seat of Government, whom the dulness of a judicial investigation could not disgust. The court did not hesitate to please the incoming President"——

Where are we, sir, that such language as this is used? Is this the Senate of the United States, and are we here the embassadors of coequal sovereignties, to be insulted by language like this? Is not this an insult to every one of us, direct and personal?

"The court did not hesitate to *please the incoming President* by seizing this extraneous and idle forensic discussion, and converting it into an occasion for pronouncing an opinion that the Missouri prohibition was void, and that, by force of the Constitution, slavery existed, with all the elements of property in man over man, in all the Territories of the United States, paramount to any popular sovereignty within the Territories, and even to the authority of Congress itself.

* * * * * * * * * * * * *

"The day of inauguration came—the first one among all the celebrations of that great national pageant that was to be desecrated by a coalition between the executive and judicial departments, to undermine the National Legislature and the liberties of the people."

Is there a solitary word of truth in this? Not one. Is a solitary fact alleged? Not one; but a broad and naked charge is made, which is intended to stamp infamy upon characters hitherto beyond the breath of reproach. Shame, shame upon the Senator that makes such charges as these, and has no proof to support them.

"The President, attended by the usual lengthened procession, arrived and took his seat on the portico. The Supreme Court attended him there, in robes which yet exacted public reverence. The people, unaware of the import of the whisperings carried on between the President and the Chief Justice, and imbued with veneration for both, filled the avenues and gardens far away as the eye could reach. The President addressed them in words as bland as those which the worst of all the Roman Emperors pronounced when he assumed the purple. He announced (vaguely, indeed, but with self-satisfaction) the forthcoming extra-judicial exposition of the Constitution, and pledged his submission to it as authoritative and final."

Does anybody find that in the President's inaugural? Does anybody find in the President's inaugural anything on this point, except that he learns the question is to be decided by the highest tribunal of the land, and that he, as every other good citizen is, is willing to render obedience to that tribunal?

"A few days later, copies of this opinion were multiplied by the Senate's press, and scattered, in the name of the Senate, broadcast over the land, and their publication has not yet been disowned by the Senate."

As if we were going to *disown* publishing the opinions of the Supreme Court of the United States.

"Simultaneously, Dred Scott, who had played the hand of *dummy* in this interesting political game, unwittingly, yet to the complete satisfaction of his adversary, was voluntarily emancipated; and thus received from his master, as a reward, the freedom which the court had denied him as a right."

Now, does not the Senator from New York know, was it not published in every newspaper in the country, that the slave's master had died? Was it not known that the man who emancipated the slave was a Black-Republican compeer in the other house, of the Senator of New York, [Mr. CHAFFEE, of Massachusetts,] who was forced to give this emancipation after having long hesitated, by the indignant denunciations of the fellow-Republicans around him. Everybody knows that, and yet here we are told by the Senator that this gift of freedom to the slave was the *reward* granted by his master, the defendant, for playing the hand of dummy in a game of cards—a political game—with the

venerable Chief Justice and Chief Magistrate of the Union. Shame, shame once more, upon the Senator who makes charges like these, without the shadow of ground for their support.

Mr. President, I am tired. I have no doubt that others are too. I have gone so much at large into these collateral subjects that, so far as regards the simple question before us, as to the admission of Kansas under this constitution, what I have to say is little indeed. The subject has been exhausted, thoroughly so, admirably so, this morning, by the honorable Senator from Missouri. I will, however, make one or two suggestions and close.

I take the ground that the Congress of the United States is not bound to give to the people of a Territory any more protection than they are willing to receive. I take the ground that about eighteen months ago the Congress of the United States listened to the complaint of the present rebels in Kansas, who said to us this: "A band of armed marauders has invaded us from a neighboring State; they have possession of our Territorial Legislature; they have passed a law by which they are about to call together a convention to form a constitution for the new State of Kansas; they will not allow us to vote fairly; we are a majority, and unless you come to our relief there is no help for us." They asked us then to admit them as a State into the Union under the Topeka constitution, as the best of all possible remedies against the usurpations of which they complained. At that time the Territorial Legislature had inaugurated the scheme for the adoption of a constitution. The law for calling a convention had been passed. They were about to vote for delegates. That was the precise time in which this vaunted majority of Free-Soilers in Kansas approached the Congress of the United States with complaints that they were down-trodden.

What did the Senate of the United States reply? The Democrats were in a majority here, and they said: "It may be that what you say is true; it may be that you are down-trodden and oppressed in violation of law; you assert it yourselves, and you have complaisant advocates here on this floor to prove it; but it is no remedy for that, that we shall admit you as a State into this family of States, under a constitution formed by one party in the Territory. We cannot do that. You say that if the territorial law is carried out, a constitution will be formed by the other party alone. Come now, we will do justice to both sides; we will pass a law by which all shall be protected, Free-Soilers and Democrats, by the strong arm of the Federal Government, by which you shall be free all to vote, free all to exercise this vaunted popular sovereignty, free all to make manifest to the nation that great majority of which you boast." The Senator from Georgia elaborated a bill for the purpose with the greatest possible care; and every possible safeguard that human ingenuity could throw around the rights of these people to protect them from invasion was there employed. Every Senator on this side suggested amendments; and when the bill finally passed the Senate, it extorted from the Senator from New Hampshire [Mr. HALE] the admission that it was fair, that it was unexceptionable; "give us that, and we are content."

Now, what occurred? In the progress of the debate upon that bill the leaders of this Republican party in the Territory informed their advocates here, in both branches of Congress, that that would not suit them; that it would put a stop to violence; that it would put a stop to uproar and confusion; and that thus the Black Republican candidate for the Presidency would be in a very lean minority, as the injured form of "bleeding Kansas" could not be presented to the eyes of the people during the impending canvass. So, sir, after the Democratic party—being in a majority in this Hall—had passed the bill to do justice to these men, and sent it to the other House, they, who now stand up for the outraged rights of these down-trodden people, defeated the bill; themselves prevented the protection which they now say it was our duty to give; and then tell us here to-day that it would be a monstrous outrage to admit Kansas into the Union with the constitution which the people formed under their own legislation. Both modes were before them; the Territorial Legislature was proceeding to pass enactments which were to result in the formation of a constitution for the new State, and the Republican party—the Free-Soil party—was imploring us for help. We told them, "choose now between the territorial legislation, and take your own chances at the polls; or take the full, strong, firm protection of the Government of the United States, which is now tendered you." They refused the latter. They said they would have Topeka or nothing; and having taken that choice, nothing, with my consent, shall they have. Topeka! Topeka! that miserable rabble of insurgents; a wretched raking together of men the very scum of the large northern cities, seeking naught but violence and bloodshed; presuming to set up their populace law, their will, against the government of this country; presuming to come and dictate to the Congress of the United States, "you shall do this or we will fight; you shall give us this Topeka constitution, or there shall be bloodshed." Miserable, miserable, indeed, would be our dereliction from duty; despicable, indeed, would fall the Congress of the United States if it grounded arms and bowed in submission to the insurgent violence of these traitors. Every law that has been passed for their protection has been scorned by them. Every attempt to give them full and adequate maintenance of their rights has been repudiated. Now, again, the attempt is made to make us do what they please, to sacrifice all rights to their threats of violence; and we are again told, upon this floor, where a cheap display of valor is made, that they will be cowards if they do not fight for their rights; and some Senators even insinuate an intention of going to help them. Mr. President, the day of that fight will never come, and the vaunt costs nothing.

The territorial legislation has gone into effect in the absence of congressional legislation, which they refused. All the forms of law, which gentlemen around me so deride, but which I respect, have been observed, and the last and sole question that remains for us is, shall Kansas still be "bleeding Kansas?" shall she still continue to display her wrongs and to cry aloud to the people of the land during another presidential canvass, or shall that noise be hushed forever? That is

the sole question, sir. The object is to keep up the excitement for another canvass. We say to these men, you shall not do it. Their object is to keep the people of this country constantly inflamed and excited. They shall not succeed in it. And now, now the great wrong and outrage that is to be done to this community is to admit her as a State into the Confederacy! Great Heavens! they are crying all around us, "What an outrage! what an outrage!" "The history of the world has never seen anything like this"

This outrage, this horrible wrong, consists in admitting them into the Union! That is all, all. Who is to organize this State government? Who is to administer it? Who will have supreme power over it, uncontrolled by congressional intervention, uncontrolled by the Federal bayonet? The people of Kansas; none but the people of Kansas. What a foul wrong it is to give them sole control of their own affairs! The Senator from Illinois [Mr. DOUGLAS] would have us believe that this is an abandonment of the principle of popular sovereignty. Mr. President, it is its very essence; it is carrying out its true intent and meaning. Let any man here tell me what higher, what more exalted example can be afforded of the right of a people to govern its own institutions, than that which is given by the people of a sovereign State of this Confederacy. That is the right we now want to bestow upon Kansas. That is the legitimate fruit of the Kansas bill. That is the act now before us. For that act I will vote.